

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RICHARD MEYER,
PLAINTIFF,

V.

MARK WAID,
DEFENDANT.

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CAUSE NO. A-18-CV-00800-LY

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

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ORDER

Before the court is the above-styled and numbered action, which was filed on September 19, 2018. There are several pending matters in the action. Defendant Mark Waid's Motion to Dismiss for Lack of Personal Jurisdiction filed November 2, 2018 (Clerk's Document No. 10), Plaintiff Richard Meyer's response filed April 12, 2019 (Clerk's Document No. 23), and Waid's reply filed April 22, 2019 (Clerk's Document No. 24) were referred to the United States Magistrate Judge for report and recommendation.¹ On June 10, 2019, the magistrate judge signed a report and recommendation suggesting that the court grant Waid's motion to dismiss in part and dismiss Meyer's defamation claim, and deny the motion in part as to the remaining tortious-interference claim (Clerk's Document No. 26).

The parties received the report and recommendation on June 10, 2019. Objections to the report and recommendation were due to be filed on or before June 24, 2019. Both sides filed objections on June 24, 2019 (Clerk's Document Nos. 27 & 29), and both sides filed responses to the objections on July 12, 2019 (Clerk's Document Nos. 32 & 34).

¹ On November 29, 2019, this court granted limited jurisdictional discovery ahead of Meyer's deadline to respond to the motion to dismiss.

Also on June 24, Meyer filed an Opposed Motion for Leave to File Plaintiff's First Amended Complaint (Clerk's Document No. 28) to which Waid responded in opposition on July 12 (Clerk's Document No. 35), and Meyer filed a reply on July 23, 2019 (Clerk's Document No. 38). By his motion, regarding the personal-jurisdiction issues raised by Waid's motion to dismiss, Meyer contends that any confusion about the nexus between the state of Texas and Meyer's defamation claim can be remedied with the proposed First Amended Complaint. By pleading the events in a more straightforward manner, Meyer argues the new pleading will reflect that Waid should have expected no less than to be haled into a Texas court for defaming a Texas resident in Texas.

Rather than take up the motion to dismiss and the report and recommendation in the first instance, the court addresses Meyer's request to file an amended complaint. Currently, there is no deadline for the parties to file amended pleadings as the parties have yet to file a proposed scheduling order. *See* Fed. R. Civ. P. 26(f), Loc. R. W.D. Tex. CV-16(c).

"[L]eave to amend should be freely given when justice so requires." Fed. R. Civ. P. 15(a). Waid opposes Meyer's request to file an amended pleading, arguing that Meyer unduly delayed in seeking leave until after the magistrate judge filed the report and recommendation. Further, Waid argues that based on the allegations in the proposed amended complaint, the court would continue to lack personal jurisdiction over Waid and, in any event, Meyer's defamation claim would be time-barred.

Having considered the case file and the applicable law, the court concludes that as the case is in the early stages, and so as to allow inclusion of all parties, claims, and defenses, the court will grant Meyer leave to file Plaintiff's First Amended Complaint. In light of allowing Meyer to file an amended complaint and to maintain order with the pleadings and motions, the court will dismiss Waid's motion to dismiss without prejudice. Upon considering the First Amended Complaint, Waid

may refile his motion to dismiss if he considers it appropriate.

IT IS ORDERED that Plaintiff Richard Meyer's Opposed Motion for Leave to File Plaintiff's First Amended Complaint filed June 24, 2019 (Clerk's Document No. 28) is **GRANTED**. The clerk of court is directed to file the proposed Plaintiff's First Amended Complaint.

IT IS FURTHER ORDERED that Defendant Mark Waid's Motion to Dismiss for Lack of Personal Jurisdiction filed November 2, 2018 (Clerk's Document No. 10) is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the parties consult the website for the United States District Court for the Western District of Texas (www.txwd.uscourts.gov), the "Forms" tab, "Austin Division," and submit a joint proposed scheduling order utilizing this court's form **on or before Friday, August 23, 2019**.

SIGNED this 24th day of July, 2019.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE